

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
March 22, 2005 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert Kirby, Board member, presided. No other Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case  
Lic = Licensing Application  
RF = Recovery Fund Claim  
Trades = Tradesmen Application

C = Complainant/Claimant  
A = Applicant  
R = Respondent/Regulant  
W = Witness  
Atty = Attorney

Participants

1. Fontaine I. Pate  
t/a F & F General Contractor  
File Number 2004-00609 (Disc)

Pate – R  
Gary Hershner – R Atty  
Scott Carpenter – C  
Kelly Carpenter – W  
Steve Wray – W  
Keith Coles – W  
Darell Mayhew – W  
Robert Ferguson – W

2. Michael Kersey  
File Number 2004-01107 (Disc)

Frederick Howland – C  
Nancy Howland – C

3. Premier Electric Company Inc.  
File Number 2004-01633 (Disc)  
**(Consent Order)**

William Faris Jr. – R  
Joan Heller – C  
Luther Garnett – W

4. Cox Brothers LLC  
File Number 2004-04142 (Disc)  
**(No decision made)**

James Cox – R  
Andrew Cox – R

5. Thurlowe Scudder  
t/a The Cabinet Shoppe  
File Number 2004-04610 (Disc)

Scudder – R  
Brian Bertholomey – C

6. Bruce W. Pierce  
t/a Arrow Pierce Const Co.  
File Number 2004-02858 (Disc)

None

7. Stephen Lander and  
Cecil G Bell  
t/a Gary's Home Repair  
File Number 2004-04269 (RF)

Jeanne Lauer – C Atty

The meeting adjourned at 4:15 p.m.

#### BOARD FOR CONTRACTORS

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Mark D. Kinser, Chairman

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Louise Fontaine Ware, Secretary

#### COPY TESTE:

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Custodian of Records

**IN THE**  
**COMMONWEALTH OF VIRGINIA**  
**BOARD FOR CONTRACTORS**

Re: Fontaine I. Pate, t/a F & F General Contractor

File Number: 2004-00609  
License Number: 2705035010

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 18, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Fontaine I. Pate, t/a F & F General Contractor ("F & F") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 22, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Fontaine Pate ("Pate"), Respondent; Gary Hershner ("Hershner"), Attorney for Respondent; Scott Carpenter ("Carpenter"), Complainant; Kelly Carpenter, Steve Wray ("Wray"), Keith Coles ("Coles"), Darell Mayhew ("Mayhew"), and Robert Ferguson ("Ferguson"), Witnesses; Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

During the IFF, Hershner stated the Carpenters obtained the permits and F & F was merely the subcontractor for the Carpenters.

Pate stated she told Carpenter he needed to obtain permits, but Pate took the permit application to Hanover County and paid for the permits.

In my opinion, F & F was the general contractor and is responsible for the work performed at the subject property.

Count 1: Board Regulation (Effective May 1, 1999)

The contract used in the transaction failed to contain seven of the provisions required by the Board's regulation.

During the IFF, Hershner stated because F & F was not the general contractor, the provisions were not required. Hershner also stated some of the provisions were included in the contract.

F & F's failure to include subsections a., c., d., e., f., h. (contractor's license/certificate number, expiration date, class of license/certificate, and classification or specialty services), and i. in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective May 1, 1999)

In June 2001, Carpenter contracted with F & F to perform repairs at the subject property. The contract called for F & F to install an electrical heating and air system upstairs, and an oil heating and air system downstairs. The contract also specified an upgrade to fixtures in both upstairs bathrooms.

F & F installed one large furnace downstairs, and installed one large air conditioning unit, instead of two. F & F also made several other changes. F & F and Carpenter verbally agreed to change the downstairs tub to a shower. F & F installed a shower at no additional cost. F & F failed to use a written change order to modify the original contract.

During the IFF, Hershner presented two written change orders. Neither change order indicated the change in the HVAC system. Only one change order was signed on behalf of F & F. Neither change orders were signed by Carpenter.

During the IFF, Pate stated she met with Carpenter on several occasions. During these meetings, Pate and Carpenter verbally agreed to changes at no additional charge. Pate stated the work in the written change orders was agreed upon, but she does not recall in the change orders were ever signed by Carpenter.

During the IFF, Carpenter agreed that the original contract requiring two separate HVAC units was verbally modified to require only one HVAC unit.

F & F's failure to use written change orders modify the original contract constitutes misconduct in the practice of contracting, and is a violation of Board Regulation 18 VAC

50-22-260.B.6. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective May 1, 1999)

In October 2001, the final electrical, HVAC, and plumbing inspections were approved. In November 2001, the final building inspection was approved. In December 2001, Carpenter noticed a problem with the heating system installed by F & F. The following month, Carpenter discovered the heating system was not adequately warming the house. Carpenter contacted F & F regarding the problem.

In the summer of 2002, Carpenter discovered the air conditioning system also did not work, and contacted F & F regarding the problem. In September 2002, F & F and Carpenter met at the subject property to discuss repair of the systems. F & F did not return to repair the systems. Carpenter later hired another contractor to inspect the systems. The contractor determined the systems were improperly installed. The contractor repaired the heating system at an additional cost to Carpenter.

During the IFF, Mayhew confirmed the HVAC installed by F & F at the subject property did pass inspection. Mayhew also stated the county does not require load calculations to be submitted regarding the HVAC system.

During the IFF, Wray confirmed R E Michel Company Inc. is a wholesaler and not an installer. Wray stated he sold a 3-ton unit to B & E Heating & A/C Services ("B & E").

During the IFF, Coles stated B & E was hired by F & F and he installed the heating system at the subject property. Coles also stated B & E did not perform load calculations.

Based on the record, Pate was notified of the problems with the HVAC system. At that time, it became apparent the HVAC system installed by F & F's subcontractor was not properly and adequately installed. Approval by the building official does not relieve a contractor from the obligation to comply with all aspects of the Virginia Uniform Statewide Building Code. The deficiencies documented by Walker's Heating & AC Inc. in its report dated May 30, 2003, outline several major code violations with respect to the installation performed under the contract with F & F.

F & F's actions constitute gross negligence in the practice of contracting, and are a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

By: \_\_\_\_\_

Robert Kirby  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: December 10, 2004 (revised December 28, 2004)

FILE NUMBER: 2004-00609  
RESPONDENT: Fontaine I. Pate, t/a F & F General Contractor  
LICENSE NUMBER: 2705035010  
EXPIRATION: August 31, 2006

SUBMITTED BY: Renee H. Popielarz  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

None.

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Fontaine I. Pate ("Pate"), t/a F & F General Contractor, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705035010).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On July 28, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from G. Scott Carpenter ("Carpenter") regarding Pate. (Exh. C-1)

On June 20, 2001, Pate entered into a written contract, in the amount of \$59,000.00, with Carpenter to perform repairs at 601 S. Center Street, Ashland, Virginia 23005. (Exh. C-2)

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1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of these regulations, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee/certificate holder or his agent. At a minimum the contract shall specify or disclose the following:
  - a. When work is to begin and the estimated completion date;
  - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license/certificate number, expiration date, class of license/certificate, and classification or specialty services;
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Pate in the transaction failed to contain subsections: a., c., d., e., f., h., and i. (Exh. C-2)



2. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

The contract specified, "upgrade fixtures in both bathrooms (sink, toilet, tub, shower (upstairs) and hardware." The contract also specified, "install electrical heating and air system upstairs including duct work, covering of ducts; install oil heating and air system downstairs beneath the house including installation of floor vents." (Exh. C-2)

Pate and Carpenter verbally agreed to change the tub downstairs to a shower. Pate installed a shower at no additional cost. (Exh. I-11)

Pate installed one large furnace downstairs and made several other changes. Pate also installed one large air conditioning unit instead of two units. (Exh. R-1)

Pate failed to use a written change order for modifications to the original contract.

3. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Gross negligence in the practice of contracting.

FACTS:

On August 16, 1996, Pate was issued Class A contractor's license number 2705035010 with the building contractors ("BLD") classification. (Exh. I-2)

On July 31, 2001, Pate obtained building permit number 1887-01 for work to be performed at the subject property. (Exh. I-3)

On August 6, 2001, Trent Electric obtained the electrical permit for electrical work to be performed at the subject property. (Exh. I-3)

On August 13, 2001, Carpenter obtained the HVAC and plumbing permits for HVAC and plumbing work to be performed at the subject property. (Exh. I-3)

On October 9, 2001, the final inspections for the electrical, HVAC, and plumbing were approved. (Exh. I-3)

On November 21, 2001, the final building inspection was approved. (Exh. I-3)

On or about December 25, 2001, Carpenter noticed a problem with the heating system installed by Pate. (Exh. I-1) In January 2002, Carpenter discovered the heating system was not adequately warming the house and contacted Pate regarding the problem. (Exh. C-1)

In the summer of 2002, Carpenter discovered the air conditioning system did not work and contacted Pate regarding the problem. (Exh. C-1)

In September 2002, Pate and Carpenter met at the subject property to discuss repair of the systems. (Exh. C-1) Pate did not return to repair the heating and air conditioning systems. (Exh. I-1)

In February 2003, at the request of Carpenter, Walker's Heating and A/C, Inc. ("Walker's") performed an inspection of the subject property. On May 30, 2003, Walker's provided Carpenter with a list of improper installation methods found at the subject property. (Exh. C-3)

On June 5, 2003, Walker's repaired the heating system, at a cost of \$4,570.00, at the subject property. (Exh. C-3)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Michael Kersey

File Number: 2004-01107  
License Number: 2705070444

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 18, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Michael Kersey ("Kersey") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Moved, Left No Address."

On March 22, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Frederick and Nancy Howland ("the Howlands"), Complainants; Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member. Neither Michael Kersey nor anyone on his behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In July 2003, the Howlands contracted with Kersey to perform renovations to the subject property.

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction reflected the firm's name as M.A. Kersey Painting.

Kersey's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

The price of the contract was \$15,800.00. Kersey only holds a Class C contractor's license. Kersey informed the Board's agent that he was not aware of the limits of a Class C license.

Kersey's action of practicing in a class of license for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain four of the minimum provisions required by the Board's regulation.

Kersey's failure to include subsections a., e., f., and h. (contractor's license number, expiration date, class of license, and classifications or specialty services) is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective January 1, 2003)

In July 2003, Kersey commenced work. On September 2, 2003, the Howlands requested the work be completed in two weeks. Kersey last worked at the subject property on September 8, 2003. A week later, the Howlands left a phone message for Kersey, but he did not respond. Kersey failed to complete several items. Kersey admitted to the Board's agent that he did not complete exterior painting.

Based on the record, Kersey stated he did not complete the painting because Nancy Howland slapped him on the head.

During the IFF, Nancy Howland denied slapping Kersey on the head.

In my opinion, Nancy Howland's testimony is more credible than Kersey's reason for not completing the painting.

Kersey's unjustified cessation of work under the contract constitutes abandonment, and is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend license revocation and no monetary penalty be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

On May 7, 2003, Kersey was issued Class C contractor's license number 2705070444. In March 2004, in Chesterfield County General District Court, Kersey was convicted of petty larceny, a Class 1 misdemeanor.

Based on the record, the conviction does not appear to warrant suspension or revocation of his license. Kersey was sentenced for 12 months, which was suspended, and ordered to pay \$65.00 in costs.

Kersey's conviction of a Class 1 misdemeanor after initial licensure is a violation of Board Regulation 18 VAC 50-22-260.B.22. Therefore, I recommend no monetary penalty be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

Kersey's failure to inform the Board in writing of his conviction within thirty (30) days of his conviction is a violation of Board Regulation 18 VAC 50-22-260.B.23. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By: \_\_\_\_\_

Robert Kirby  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: October 22, 2004 (revised December 28, 2004)

FILE NUMBER: 2004-01107  
RESPONDENT: Michael Kersey  
LICENSE NUMBER: 2705070444  
EXPIRATION: May 31, 2005

SUBMITTED BY: E. Nathan Matthews  
APPROVED BY: Wayne Mozingo

COMMENTS:

None.

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Michael Kersey ("Kersey") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705070444).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On September 1, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Frederick and Nancy Howland ("the Howlands") regarding M. A. Kersey Painting & Contracting. (Exh. C-1)

On July 6, 2003, M. A. Kersey Painting entered into a written contract, in the amount of \$15,800.00, with the Howlands to replace all siding, brick mold, rotten trim, and all vents and paint the exterior of the house at 11002 Whistling Swan Place, Chesterfield, Virginia 23838. The contract indicated M. A. Kersey Painting's address was 7901 Winterpock Rd, Chesterfield, VA 23832. (Exh. C-3)

On July 6, 2003, the Howlands paid M. A. Kersey Painting \$4,700.00 by check. (Exh. C-4) On August 27, 2003, the Howlands paid M. A. Kersey Painting \$1,100.00 by check. (Exh. C-5)

On May 7, 2003, Kersey was issued Class C contractor's license number 2705070444. The address of record for Kersey is 7901 Winterpock Rd, Chesterfield, VA 23832. (Exh. I-1)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

Kersey failed to operate in the name in which the license is issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

Section 54.1-1100 of the Code of Virginia states "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

On December 8, 2004, Kersey admitted he was not aware of the value limit of his Class C contractor's license at the time of the contract with the Howlands. (Exh. I-5)

Kersey practiced in a class of license for which he is not licensed.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by Kersey in the transaction failed to contain subsections: a., e., f., and h. (Exh. C-3)

On December 8, 2004, Kersey admitted he was not aware his contract did not contain all the minimum provisions required by the Board for Contractors. (Exh. I-5)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

On July 24, 2003, Kersey commenced work. (Exh. C-1)

On September 2, 2003, the Howlands sent Kersey a letter requesting the work be completed in two weeks. (Exh. I-3)

The last day Kersey performed work at the subject property was September 8, 2003. (Exh. I-3)

On September 15, 2003, the Howlands left a telephone message for Kersey, but Kersey did not respond. (Exh. I-3)



As of October 1, 2003, Kersey failed to complete the trim work, the exterior painting, replace the foundation vents peak vents, and provide a trash dumpster on site. (Exh. I-3)

On December 8, 2004, Kersey admitted he did not complete the exterior painting. (Exh. I-5)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having lapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

FACTS:

Kersey is the Responsible Management and Qualified Individual for license number 2705070444. (Exh. I-1)

On March 8, 2004, in the Chesterfield County General District Court, Kersey was convicted of petty larceny, a Class 1 misdemeanor, in violation of Section 18.2-96 of the Code of Virginia. There is no appeal pending and the time for appeal has lapsed. (Exh. I-6)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

FACTS:

As of December 28, 2004, Kersey failed to inform the board in writing, within thirty (30) days, of his conviction of a Class 1 misdemeanor.

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Premier Electric Company Inc, t/a Premier Electric Company Inc  
Richmond, VA 23230

File Number 2004-01633  
License Number 2705038054

**CONSENT ORDER**

Respondent Premier Electric Company Inc, t/a Premier Electric Company Inc ("Premier Electric Company Inc") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

**Board's 2003 Regulations provides:**

**18 VAC 50-22-200. Remedial education, revocation or suspension; fines.**

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On January 18, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Premier Electric Company Inc. ("Premier") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 22, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: William C. Faris Jr. ("Faris"), on behalf of Premier, Respondent; Joan Heller ("Heller"), Complainant; Luther Garnett ("Garnett"), Witness; Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, Heller stated she hired Premier to connect and perform the electrical work to install the generator she purchased.

During the IFF, Faris stated Temple, Premier's office supervisor, handled this account. Faris also stated Temple is no longer with Premier and he could not find a copy of a contract for this transaction.

The Board and Premier Electric Company Inc, as evidenced by the signatures affixed below, enter into this Consent Order. Premier Electric Company Inc knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Premier Electric Company Inc acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Premier Electric Company Inc consents to the following term(s):

|  |         |                      |        |
|--|---------|----------------------|--------|
|  | Count 1 | 18 VAC 50-22-260.B.8 | \$0.00 |
|  |         |                      | -----  |
|  | TOTAL   |                      | \$0.00 |

In addition, Premier Electric Company Inc agrees to have a member of Responsible Management successfully complete remedial education by attending the Board's Basic Contracting License class and passing the examination Management within six months of the effective date of this order for violation of Count 1.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Premier Electric Company Inc acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Premier Electric Company Inc will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

**Premier Electric Company Inc acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Premier Electric Company Inc's license until such time as there is compliance with**

all terms of this Order. Premier Electric Company Inc understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

DRAFT

SEEN AND AGREED TO:

\_\_\_\_\_  
Premier Electric Company Inc  
t/a Premier Electric Company Inc

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

\_\_\_\_\_  
CITY/COUNTY OF  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Board for Contractors

BY: \_\_\_\_\_  
Louise Fontaine Ware, Secretary

EOO

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

AMENDED  
REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: December 10, 2004 (revised December 28, 2004 and  
amended March 22, 2005)

FILE NUMBER: 2004-01633  
RESPONDENT: Premier Electric Company Inc.  
LICENSE NUMBER: 2705038054  
EXPIRATION: March 31, 2005

SUBMITTED BY: Renee H. Popielarz  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

Joan Heller stated Premier took the difference of the depreciated value of her appliances given to her by Premier's insurance company off of the bill for their work and she then paid the remainder. The financial obligations have been settled.

\*\*\*\*\*

Premier Electric Company Inc. ("Premier") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705038054).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On October 8, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Joan Heller ("Heller") regarding Premier. (Exh. C-1)

Heller received a verbal quote, in the amount of \$2,400.00, from Premier to install a generator and propane at 5478 Herring Creek Road, Aylett, Virginia 23009. (Exh. C-1)

In mid June 2003, Premier commenced work. (Exh. C-1)

On September 25, 2003, Premier sent Heller an invoice, in the amount of \$2,400.00, for the electrical work to install a 20kw generator at the subject property. (Exh. C-4)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

In a written response dated November 24, 2004, Premier admitted “there was not contract written between the two parties.” (Exh. R-2)

Premier failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.



**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Thurlowe Scudder, t/a The Cabinet Shoppe

File Number: 2004-04610  
License Number: 2705031474

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 18, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Thurlowe Scudder ("Scudder"), t/a The Cabinet Shoppe to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 22, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Thurlowe Scudder, Respondent; Brian Bertholomey ("Bertholomey"), Complainant; Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain four of the minimum provisions required by the Board's regulation.

During the IFF, Scudder stated the provisions were not included in the contract.

Scudder's failure to include subsections e., f., h. (contractor's address, license number, expiration date, class of license, and classifications or specialty services), and i. is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

In February 2003, Brian and Sheila Bertholomey ("the Bertholomeys") contracted with Scudder to construct a log home at the subject property. Scudder informed the Bertholomeys' bank that the work could be done for \$210,000.00. The contract price agreed to was \$210,000.00. However, as of May 2004, the total expenditures for construction of the home were \$287,874.83. Bertholomey told the Board's agent he believed Scudder was dishonest in telling him the contracted price could be met.

During the IFF, Bertholomey stated that he was told by Scudder that the log home could be constructed for \$210,000.00. Bertholomey further stated that when he began to notice that the project was going over budget, Scudder assured him that "we are going to make it."

During the IFF, Scudder stated that his contracts establish estimated costs of construction, not a fixed price. Scudder stated that he made this clear to Bertholomey and Bertholomey's bank at the time the contract was agreed. Scudder further stated that when he realized the costs of construction would go over the \$210,000.00 amount, he cut back on labor costs. Scudder also stated that because Bertholomey was able to obtain another loan from his bank, that there was not a problem.

Scudder's action of making a misrepresentation in order to obtain a contract is a violation of Board Regulation 18 VAC 50-22-260.B.17. Therefore, I recommend a monetary penalty of \$1,500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

During construction, Scudder installed a retaining wall at an additional cost, and also installed a tub instead of a shower. Scudder did not obtain a change order.

During the IFF, Scudder stated that there were no written change orders for additional work performed.

Scudder's failure to obtain signed, written change orders modifying the scope of work, materials, and costs is a violation of Board Regulation 18 VAC 50-22-260.B.31.

Therefore, I recommend a monetary penalty of \$1,000.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective January 1, 2003)

Scudder performed all electrical and plumbing work, and installed a floor heating system. Scudder's Class A contractor's license only has a building contractors (BLD) classification. By performing electrical, plumbing, and HVAC work, Scudder practiced in classifications for which he is not licensed.

During the IFF, Bertholomey stated he observed Scudder and Scudder's son performing the plumbing and electrical work. Bertholomey stated that Bobby Boyd only performed excavating work. Bertholomey stated he did not pull electrical, plumbing, or mechanical permits.

During the IFF, Scudder stated that Bobby Boyd supervised, or quality checked, the electrical and plumbing work performed at the subject property. Scudder also stated he hired a subcontractor to install the floor heating system. Scudder further stated he did not pull electrical, plumbing, or mechanical permits for the job. Scudder was also unaware if Bertholomey obtained the permits.

The record is not clear as to how the electrical, plumbing, and mechanical permits were obtained. However, the record is clear that Scudder provided plumbing and electrical services without possessing the necessary classifications or specialty services.

Scudder's action of practicing in classifications for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$1,500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 5: Board Regulation (Effective January 1, 2003)

The contract specified construction would begin on February 25, 2003, and be completed in six (6) months. Scudder obtained the building permit in April 2003, a temporary occupancy permit was issued in October 2003, and a final occupancy permit was

obtained in December 2003. By failing to start and finish within the timeframe specified in the contract, Scudder failed to comply with the terms of the contract.

During the IFF, Bertholomey stated Scudder did not complete some items, and that Bertholomey hired other individuals to do the work, as well as performed some work himself.

During the IFF, Scudder stated delays in the start and completion of the project were due to the weather.

The record indicated Scudder did not persecute and complete the project with the due diligence expected by the terms of his contract. Several items were never completed by Scudder, and Bertholomey was forced to either complete these items himself, or to hire other individuals to have the work completed.

Scudder's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 6: Board Regulation (Effective January 1, 2003)

In April 2004, Bertholomey sent Scudder a list of punch list items to be repaired, and requested the items be repaired by May 1, 2004. Scudder failed to make the repairs.

The record indicated Scudder did not persecute and complete the project with the due diligence expected by the terms of his contract. Several items were never completed by Scudder, and Bertholomey was forced to either complete these items himself, or to hire other individuals to have the work completed.

Scudder's failure to honor the terms and conditions of a warranty is a violation of Board Regulation 18 VAC 50-22-260.B.30. Therefore, I recommend a monetary penalty of \$2,500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

By: \_\_\_\_\_  
Robert Kirby  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Contractors  
DATE: December 14, 2004 (revised January 3, 2005)

FILE NUMBER: 2004-04610  
RESPONDENT: Thurlowe Scudder, t/a The Cabinet Shoppe  
LICENSE NUMBER: 2705031474  
EXPIRATION: January 31, 2006

SUBMITTED BY: Dale C. Amos  
APPROVED BY: Wayne Mozingo

COMMENTS:

On site visit made on December 2, 2004, by Inv. Dale C. Amos. Bertholomey is not involved in a civil suit with Scudder.

\*\*\*\*\*

Thurlowe Scudder ("Scudder"), t/a The Cabinet Shoppe, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705031474).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On May 10, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Brian and Sheila Bertholomey ("the Bertholomeys") regarding Scudder. (Exh. C-1)

On February 19, 2003, Scudder entered into a written contract, in the amount of \$210,000.00, with the Bertholomeys to construct a log home at Hawk Nest Lane, Draper, Virginia. (Exh. C-2)

On April 4, 2003, Scudder obtained building permit number 538-02 for the construction of the new home at the subject property. (Exh. I-2)

On October 3, 2003, a temporary occupancy permit was issued. On December 8, 2003, the occupancy permit was issued. (Exh. I-2)

On January 25, 1996, Scudder was issued Class A contractor's license number 2705031474 with the building contractors ("BLD") classification. (Exh. I-1)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Scudder in the transaction failed to contain: e., f., h., and i. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

FACTS:

On February 3, 2003, Scudder provided a letter to Dan Porter of The Bank of Marion regarding the contract price. Scudder stated, "We feel that doing it for \$210,000.00 can be done, but within that figure there is little to no margin of safety." (Exh. C-3)

As of May 5, 2004, the total expenditures for the construction of the home were \$287,874.83. (Exh. C-1)

On December 2, 2004, Bertholomey stated he felt Scudder was dishonest during the construction of the house by telling him the total contract price could be met. (Exh. I-3)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

During the construction, Scudder installed a retaining wall at an additional cost of \$12,180.98. Scudder also installed a tub instead of a shower. (Exh. I-3)

Scudder failed to use written change orders, signed by all parties, for modifications to the scope of the work to be performed, materials, and costs.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

Scudder performed all electrical work and plumbing work and installed the radiant floor heating system for the construction of his house. (Exh. I-3)

According to 18 VAC 50-22-20, "If the BLD contractor performs specialty services, all required specialty designations shall be obtained."



Scudder practiced in a specialty service for which he is not licensed.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified, "The estimated start date of construction shall be Feb 25, 2003. The term of Construction shall be 6 months." (Exh. C-2)

Scudder failed to comply with the terms of the contract.

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

30. Failure to honor the terms and conditions of a warranty.

FACTS:

On April 5, 2004, Bertholomey sent Scudder a letter, via certified letter, regarding punch list items to be repaired. Bertholomey requested Scudder complete the repairs by May 1, 2004. On April 7, 2004, the certified letter was signed for and received by Scudder. (Exh. C-6)

As of December 2, 2004, Scudder failed make repairs and honor the terms and conditions of the warranty. (Exh. I-3)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Bruce W. Pierce, t/a Arrow Pierce Construction

File Number: 2004-02858  
License Number: 2705074726

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On January 18, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bruce W. Pierce ("Pierce"), t/a Arrow Pierce Construction to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked with a new address for Pierce.

On February 7, 2005, the Notice was sent, via certified mail, to Pierce at 410 Asal Road, Farmville, Virginia 23901. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On March 22, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member. Neither Bruce Pierce, Respondent, nor anyone on his behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In October 2003, Pierce contracted to perform repairs at the subject property. The contract used in the transaction failed to contain six of the provisions required by the Board's regulation.

The contract was only for \$400.00, which was subsequently reduced by mutual agreement to \$200.00.

Pierce's failure to include subsections a., d., e., f., h. (contractor's address, license number, expiration date, and class of license), and i. is a violation of Board Regulation 18 VAC 50-22-260.B.9. Based on the ultimate value of the contract, I recommend remedial education and no monetary penalty be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

By: \_\_\_\_\_  
Robert Kirby  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Contractors  
DATE: December 22, 2004  
  
FILE NUMBER: 2004-02858  
RESPONDENT: Bruce W. Pierce, t/a Arrow Pierce Const Co.  
LICENSE NUMBER: 2705074726  
EXPIRATION: February 28, 2005  
  
SUBMITTED BY: Janet Creamer  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

On March 25, 2004, the complaint withdrew her complaint.

\*\*\*\*\*

Bruce W. Pierce ("Pierce"), t/a Arrow Pierce Const Co., was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705074726).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On January 15, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Betty Ford ("Ford") regarding Pierce. (Exh. C-1)

On October 8, 2003, Pierce entered into a written contract, in the amount of \$400.00, with Hughes to perform repairs at 332 Church Street, Appomattox, Virginia. (Exh. C-2)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Pierce failed to contain subsections: a., d., e., f., h., and i. (Exh. C-2)

**IN THE**  
**COMMONWEALTH OF VIRGINIA**  
**BOARD FOR CONTRACTORS**

Re: Stephen and Karen Lander (Claimants) and Cecil G. Bell, t/a Gary's Home Repair (Regulant)

File Number: 2004-04269  
License Number: 2705048944

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 3, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Stephen and Karen Lander ("Claimants"); Jeanne Lauer, Esquire ("the Claimants' Attorney"); and Cecil G. Bell, t/a Gary's Home Repair ("the Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail sent to the Claimants and to the Claimants' Attorney was signed for and received. The certified mail sent to the Regulant at 1517 Chela Avenue B-3, Norfolk, Virginia 23503, was returned by the United States Postal Service and was marked "No Such Number."

On December 1, 2004, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Jeanne Lauer (by phone), Attorney for Claimants; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Board Member. Neither Cecil G. Bell, t/a Gary's Home Repair nor anyone on his behalf appeared at the IFF.

On December 29, 2004, a letter acknowledging that the IFF will reconvene was mailed, via certified mail, to the Claimants, Claimants' Attorney, and the Regulant. The certified mail sent to the Claimants and the Claimants' Attorney was signed for and received. The certified mail sent to the Regulant at the address of record of 1518 Chela Avenue B-3, Norfolk, Virginia 23503 was returned by the United States Postal Service and was marked "Not Deliverable as Addressed, Unable to forward."

On February 25, 2005, a reschedule letter was mailed, via certified mail, to the Claimants, c/o Jeanne Lauer, Esquire, and to the Regulant. The certified mail sent to the Claimants and the Claimants' Attorney was signed for and received. The certified mail sent to the Regulant at the address of record was returned by the United States Postal Service and was marked "Not Deliverable as Addressed, Unable to forward."

The following individuals participated at the reconvened IFF: Jeanne Lauer (by phone), Attorney for Claimants; Joseph Haughwout, Staff Member; and Robert Kirby, Presiding Board Member. Neither Cecil G. Bell, t/a Gary's Home Repair nor anyone on his behalf appeared at the IFF.

### **RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the recovery fund claim:

The Claimants entered into a written contract with GCP, Inc., on March 5, 2001 for the installation of a new roof at 3805 Chellwood, Virginia Beach, Virginia, 23452. The contract indicated Gary Bell as the owner of GCP, Inc. and Lic # 2705048944C.

On March 8, 2001, the Claimants paid Gary Bell \$1,450.00 by check prior to starting the project for the purchase of materials. The Regulant never returned to install the roof and never returned the Claimants' funds.

On February 20, 2002, in the City of Virginia Beach General District Court, Stephen & Karen Lander obtained a Judgment against Cecil "Gary" Bell, t/a Gary's Home Repair, in the amount of \$1,450.00, attorney fees of \$500.00, plus interest and \$30.00 costs for a total judgment of \$1,980.00. The judgment indicated that the basis for the suit as "Fraud/Conversion."

The Claimants are seeking a payment from the Recovery Fund in the amount of \$2,003.00. The claim form indicates a judgment of \$1,450.00, \$53.00 in court costs, and \$500.00 in attorney's fees.

During the IFF, the Claimants' Attorney stated the costs and fees were as follows: \$18.00 as the initial filing fee for the Warrant in Debt, \$10.00 as a service fee for service of process, \$25.00 for a guardian ad litem fee, and \$18.00 for the filing of debtor's interrogatories, and \$12.00 as a service of process fee for the debtor's interrogatories. The total costs equal \$83.00.

Based on the record, the Regulant's actions of receiving payment, failing to perform work and/or return the money received from the Claimants, and having a judgment entered against him for "Fraud/Conversion" constitute improper and dishonest conduct.

Therefore, I recommend the recovery fund claim be approved for payment in the amount of \$2,033.00. This includes \$1,450.00 for the judgment, \$83.00 for costs, and \$500.00 for attorney's fees.

By: \_\_\_\_\_

Robert Kirby  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

DRAFT



## CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor  
Legal Assistant

DATE: April 28, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of Stephen & Karen Lander (Claimants) and Cecil G. Bell t/a Gary's Home Repair (Regulant)  
File Number: 2004-04269

## BACKGROUND

On February 20, 2002, in the City of Virginia Beach General District Court, Stephen & Karen Lander obtained a Judgment against Cecil "Gary" Bell, t/a Gary's Home Repair, in the amount of \$1,450.00, attorney fees of \$500.00, plus interest and \$30.00 costs for a total judgment of \$1,980.00.

A claim in the amount of \$2,003.00 was received by the Department of Professional and Occupational Regulation on February 13, 2003.

## CLAIM FILE INFORMATION

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Fraud/Conversion" as the basis for the suit.  
The block designated "Other" has been marked.

Section 54.1-1120(A) also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants did contract with the regulant.

The Board issued Class C License Number 2705048944 to Cecil G. Bell t/a Gary's Home Repair on April 1, 1999. The license will expire on April 30, 2005. The claimants entered into a written contract with GCP, Inc., on March 5, 2001 for the installation of a new roof at 3805 Chellwood, Virginia Beach, Virginia, 23452. (note: the address on the claim form is 8310 Quail Creek Drive, Colfax, N.C. 27235).

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on February 20, 2002. The claim was received on February 13, 2003.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with GCP, Inc., on March 5, 2001 for the installation of a new roof at 3805 Chellwood, Virginia Beach, Virginia, 23452.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B

State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant failed to appear.

Section 54.1-1120(A)(7) states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Fraud/Conversion the basis for the suit. The block designated "Other" has been marked.

In the Affidavit of Facts dated April 14, 2003, the claimant asserts that the regulant received a down payment in the amount of \$1,450.00 prior to starting the project for the purchase of materials. The regulant never returned to install the roof and never returned the claimants' funds.

Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.